IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.5674 OF 2003 AND WRIT PETITION NO. 5705 OF 2003
AND
WPMP.NO.7356 OF 2003

T. Kalaiselvi .. Petitioner in both WPs

-Vs-

1. The Regional Transport Authority,
Tiruchirapalli 20.

2. The State Transport Appellate
Tribunal, High Court compound,
Chennai 104. .. Respondents 1 & 2 in both WPs

3. Smt. K. Devaki,
D/o. Thiagarajan
F-6, Housing Unit, Salainagar,
Tiruchirapalli 3. .. Respondent No.3 in WP.5674/03

4. Saleem Transport, rep. by its
Managing Partner,
M. Althasff Hussain,
Noor Mahal, 3, Arabic College Lane,
Tiruchirapalli 20. .. Respondent No.3 in WP.5705/03

Petitions filed under Article 226 of the Constitution of India for
issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.V.T. Gopalan
Senior counsel for
Mr.N. Gopalakrishnan

For Respondents 1-2 : Mr.P. Chandrasekar
Special Govt. Pleader

Respondent No.3 : Mr.K. Alagirisamy
Senior Counsel for
Mr.M. Palani

:ORDER

The facts giving rise to the present writ petitions are as follows:
Petitioner had applied for the grant of mini bus permit on the route Thiruverambur Bus Stand to Anna Nagar Periyar Silai via. BHEL Cauvery House, BHEL police station, Karuppukoil, Bhurma Colony checkpost. The Regional Transport Authority came to the conclusion that the total distance of the route was 19 km., of which the served sector was 3.9 km and accordingly granted mini bus permit. Revision Petition No.4 8 of 2001 was filed by Althaf Hussain, respondent No.3 in W.P.No.570 5 of 2003. Similarly the petitioner's application for grant of mini bus permit to ply on the route Anna Nagar Bus stop Periyar Silai to Thiruverambur Bus Stand via. Burma Colony Check post, Burma colony, and BHEL Temple having been granted, one Smt. Devaki, respondent No.3 in W.P.No.5674 of 2003 filed Revision Petition No.50 of 2001. Both the Revision Petitions were taken up together and allowed by the State Transport Appellate Tribunal, respondent No.2 in both the writ petitions, by judgment dated 29.1.2002. The Revisional Authority while coming to the conclusion that the revisions were filed within time and that the applicants in the revision petitions had locus standi to challenge the order of the Regional Transport Authority, has concluded that the distance in the served sector had exceeded 4 km. and as such permit could not have been granted.

2. Learned senior counsel appearing for the petitioner has raised the following contentions :-

(1) The order granting permit was passed by the Regional Transport Authority (Respondent No.1 in the present writ petitions) on 2.8.2000 and the Revision Petitions were filed beyond the stipulated period of 30 days.

(2) The Revision applicants, who were sector operators, had no locus standi to challenge the order granting permit in favour of the petitioner.

(3) The conclusion that distance of the served sector is more than 4 km. is erroneous and at any rate the application filed by the present petitioner for consideration of the additional material was not taken into account by the Regional Transport Authority.

3. The contentions raised by the petitioner has been resisted by the learned counsel appearing for the respondents, particularly respondent NO.3 in both the writ petitions.

4. Section 90 of the Motor Vehicles Act, 1988, which confers revisional power on the State Transport Appellate Tribunal, is as follows :-

 90. Revision.- The State Transport Appellate Tribunal may, on an application made to it, call for the record of any case in which an order has been made by a State Transport Authority or Regional Transport Authority against which no appeal lies, and if it appears to the State Transport Appellate Tribunal that the order made by the State Transport Authority or Regional Transport Authority is improper or illegal, the State Transport

Appellate Tribunal may pass such order in relation to the case as it deems fit and every such order shall be final:

Provided that the State Transport Appellate Tribunal shall not entertain any application from a person aggrieved by an order of a State Transport Authority or Regional Transport Authority, unless the application is made within thirty days from the date of the order:

Provided further that the State Transport Appellate Tribunal may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time:

Provided also that the State Transport Appellate Tribunal shall not pass an order under this section prejudicial to any person and sufficient cause from making the opportunity of being heard.

5. The first proviso to Section 90 provides the period of limitation as thirty days from the date of the order and the second proviso empowers the revisional authority to entertain any revision after the expiry of the said period if the revisional authority is satisfied that the applicant is prevented by good and sufficient cause from making the application in time. The Tribunal, relying upon Rule 159 of Tamil Nadu Motor Vehicles Rules framed in exercise of the power conferred under Sections 28,33,65,98,107,113,138 read with 211 of the Motor Vehicles Act and the decision of Andhra Pradesh High Court in A.I.R. 1974 AP 294 (P. BALARAMA KRISHNA RAO AND ANOTHER v. THE GOVT. OF ANDHRA PRADESH AND OTHERS), has come to the conclusion that the period of 30 days is to run from the date of receipt of the order by the aggrieved person.

6. Rule 159 is as follows:
 159. Revision Petition  An application to the State Transport Appellate Tribunal under section 90 shall be in the form of memorandum setting forth concisely the purport of the petition and shall be presented to the Tribunal within thirty days of the date of receipt by the person aggrieved of the order or proceeding against which the application is preferred. The application shall be accompanied by five additional copies of the same and the original or a certified copy of the order of proceedings against which the application is preferred:

Provided that an application signed or presented by or on behalf of more than one aggrieved party shall not be entertained:

Provided further that where an application is presented within thirty days of the date of receipt by the person aggrieved of the order or proceedings sought to be revised, but is returned, by the Tribunal for re-presentation in the prescribed manner and if such application is represented in the manner prescribed and within the date, if any, specified by the Tribunal, it shall be deemed to have been presented within the prescribed time for the purpose of this rule.

7. Relying upon the interpretation given by the Andhra Pradesh High Court in A.I.R. 1974 ANDHRA PRADESH 294 (cited supra) in respect of Section 64-A of the Motor Vehicles Act, 1939 and Rule 196 of the Andhra Pradesh Rules, which was similar to the present Rule 159 of the Tamil Nadu Motor Vehicles Rules, the Tribunal has come to the conclusion that the provisions contained in the Act and the Rules should be read together and if so read, the period of limitation is to commence from the date of receipt of the order.

8. Section 90 of the Motor Vehicles Act, 1988 is almost on similar terms with Section 64-A of the Motor Vehicles Act, 1939. However, the second proviso, which empowers the revisional authority to entertain the revision for good and sufficient cause after the period of limitation, was absent in corresponding Section 64-A of the old Act.

9. In A.I.R. 1965 SC 458 (MUNICIPAL BOARD, PUSHKAR v. STATE TRANSPORT AUTHORITY, RAJASTHAN AND OTHERS), one of the questions raised was relating to the question of period of limitation for filing revision petition under Section 64-A of the Motor Vehicles Act, 1939. It is worthwhile to extract in extenso the discussion on this point :

 . . . (22) this brings us to the question of limitation. Section 64-a provides that State Transport Authority shall not entertain any application from a person aggrieved by an order of the Regional Transport Authority unless the application is made within 30 days from the date of the order. According to the appellant, the impugned order was made by the Regional Transport Authority on December 4, 1959, and consequently the application for revision made by the respondents on April 13, 1960 was barred. It was suggested that in fact the respondents who moved the revision application on April 13, 1960 were aware of the order made by the Regional Transport Authority on December 4, 1959; but assuming that they had no such knowledge, the question of knowledge, it was urged, was totally irrelevant. The section has provided that no application shall be entertained unless it is made within 30 days from the date of the order and the courts cannot read it as within 30 days from the date of the knowledge of the order. In this connection the learned Attorney-General has drawn our attention to the decisions of the Privy Council in Nagendranath v. Suresh Chandra, AIR 1932 PC 165 and General Accident Fire and Life Assurance Corporation Ltd. v. Janmohomed Abdul Rahim, AIR 1941 PC 6 where it has been emphasised that in interpreting the provisions of limitation,  equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide. There can be no doubt that this principle has always been acted upon by the courts. This principle has recently been re-affirmed by this Court in Boota Mal v. Union of India, Civil Appeal No.507 of 1960 D/- 27-3-1962: (AIR 1962 SC 17 16).

(23) We agree therefore that the words date of the order should not be read as from the date of knowledge of the order in the absence of clear indication to that effect. In this connection the learned Attorney-General has drawn our attention to several sections of the Motor Vehicles Act to show that where the legislature in prescribing the period of limitation intended

that time should run from some other date than the date when the order was made clear indication of such intention was given. Thus Section 13 in providing for an appeal from an order made refusing or revoking a driving licence says that an aggrieved person may appeal "within 30 days of the service on him of the order". Section 15 which provides for an appeal from an order of the licencing authority disqualifying a person from holding a driving licence lays down that an aggrieved person may appeal "within 30 days of the receipt of the order". Section 16 which provides for an appeal against certain orders of the Regional Transport Authority says that the aggrieved person may appeal "within 30 days of the receipt of intimation of such order". Section 35 which is another section providing for appeal says that the appeal may be made "within 30 days of the date of receipt of notice of the order".

(24) There is considerable force therefore in the argument that if the legislature had intended that an application for revision under Section 64-A may be made within 30 days from the date of intimation or knowledge of the order to the aggrieved person it would have said so; and in the absence of any such thing the court is bound to hold that the application will be barred unless made within 30 days from the date of the order by which the person is aggrieved. . . ."

Sarkar, J. who had given a separate judgment, also concurred with the opinion expressed by Das Gupta, J. on behalf of four other judges, by observing as follows :

" . . . (42) I do not think that under Section 64-A the period of thirty days has to be counted from the date that the party wishing to move under that section comes to have knowledge of the order sought to be set aside. My learned brother Das Gupta J. has in the judgment just delivered by him discussed this question and with his view on that point I am in entire agreement. It is unnecessary for me to discuss the question further. Therefore, it would appear that the respondents' petition under Section 64-A to set aside the order of December 3 /4, 1959 was out of time and should have been dismissed. The State Transport Authority's decision that it was not out of time because the period of thirty days has to be counted from the date of the knowledge of the order was patently erroneous and therefore the appellant should have been held entitled to the writ by the High Court of Rajasthan."

10. A perusal of the aforesaid decision makes it clear that while construing similar provisions relating to old Motor Vehicles Act, 1939 the Constitutional Bench of the Supreme Court has clearly down that limitation of 30 days shall commence from the date of the order and not from the date of the knowledge of the order. It is of course true that there was no occasion for the Supreme Court to consider the effect of Rules similar to Rule 196 of the Andhra Pradesh Rules or Rule 159 of the present Tamil Nadu Rules, where under it has been indicated that the revision can be filed within a period of thirty days from the date of receipt of the order.

11. It is contended by the learned senior counsel appearing for the petitioner that the absence or presence of Rule on this aspect would not make any difference in the matter of interpretation of limitation period

prescribed in the statute itself. It has been specifically submitted by him that the Rules made under a Statute cannot have the effect of overriding the provisions contained in the Statute itself and either the rule must be read consistently with the provisions contained in the Act or to be struck down as contrary to the provisions of the Act. Such submission of the learned counsel appearing for the petitioner is well-founded.

12. In 2001(8)SCC 676 (BHARATHIDASAN UNIVERSITY AND ANOTHER v. ALL-INDIA COUNCIL FOR TECHNICAL EDUCATION AND OTHERS) it was observed that AICTE cannot make any regulation in exercise of the power conferred under Section 23 of the Act inconsistent with the provisions contained in the Act.

13. In 1994(6) SCC 506 ( NEDURIMILLI JANARDHANA REDDY v. PROGRESSIVE DEMOCRATIC STUDENTS UNION AND OTHERS) it was observed :-

 . . . Rules are not, as indeed they cannot be, made to supplant the provisions of the Act but to supplement them and they have to be read as such. . . . Unless so read, the provisions will be invalid on account of excessive delegation enabling the government to make the rules which supplant or substitute the provisions of the Act. . . .

14. In 2000(5) SCC 451 (ADDITIONAL DISTRICT MAGISTRATE (REV.) DELHI ADMINISTRATION v. SRI RAM) it was observed :

 16. It is a well-recognised principle of interpretation of a statute that conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and From P-5, the rule-making authority has exceeded the power conferred on it by the Land Reforms Act. . . .

15. It is not necessary to multiply the authorities in this aspect as law is well settled that the statutory rules made under a particular Statute have to be consistent with the provisions contained in the Statute itself and such rules to the extent of inconsistency must be taken to be inoperative even if such rules are laid before the Legislature.

16. The State Transport Appellate Tribunal appears to have relied upon the decision of the Supreme Court reported in 1981(2)SCC 205 ( STATE OF TAMIL NADU v. M/s. HIND STONE AND OTHERS) and the decision reported in 1992 SC 1033 (PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD. AND ANOTHER v. RESERVE BANK OF INDIA) to come to a conclusion that Section 90 should be read together with Rule 159. So far as the former decision is concerned, the following portion has been extracted by the Tribunal :-

 (5) A statutory rule, while ever subordinate to the parent statute, is otherwise, to be treated as part of the statute and as effective. Rules made under the statute must be treated for all purposes of construction or

obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation. . . . (emphasis added)

The aforesaid observation made in a different context does not lay down that if there is any inconsistency between the Act and the Rule, the provisions contained in the Act are to be read in the light of the provisions contained in the Rules as has been done by the Tribunal in the present case. As a matter of fact, the portion emphasised makes it clear that a statutory rule is always subordinate to the parent statute. In other words, if there is any inconsistency, the provisions contained in the Rules must give way to the provisions contained in the statute or must be read in consonance with the provisions contained in the parent statute.

17. The observations made in 1992 SC 1033 (cited supra) cannot be said to have laid down anything contrary.

18. As a matter of fact, under the Motor Vehicles Act, 1988, a perusal of different provisions also makes it clear that whenever the Legislature wanted that the period of limitation should commence from a date different from the date of the order, it has been so indicated. To illustrate

this aspect, Section 17(2) of the new Act provides that any person aggrieved by an order made under sub-section (1), may within thirty days of the service on him of the order, appeal to the prescribed authority. (emphasis added).

Similarly under Section 33(2) of the new Act it is provided Any person aggrieved by an order made under sub-section (1) may, within thirty days of the service on him of the order, appeal to the prescribed authority. (emphasis added).

Under Section 57, it has been provided :

57. Appeals  (1) Any person aggrieved by an order of the registering authority under Sections 41,42,43,45,47,48,49,50,52,53,55 or 56 may, within thirty days of the date on which he has received notice of such order appeal against the order to the prescribed authority. ( emphasis added)

(2) . . .

Under Section 89 (1) it has been provided that any person may within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal.

19. Since under Section 90 it has been specifically provided that the revision should be filed within thirty days from the date of the order, as distinguished from other provisions already noticed, it is apparent that the intention of the legislature was that the period for filing the appeal shall be thirty days from the date of the order. As a matter of fact,

it must be presumed that the interpretation given by the Constitutional Bench of the Supreme Court in A.I.R. 1965 SC 458 (cited supra) regarding the period of limitation for filing revision under Section 64-A was within the knowledge of the Parliament and yet the very same provision appears to have been re-enacted as Section 90. In other words, it must be taken that the interpretation quoted by the Supreme court has received the legislative sanction.

20. It is no doubt true that the Andhra Pradesh High Court in A.I. R. 1974 A.P. 294 and the Kerala High Court in A.I.R.1985 KERALA 44, while interpreting Section 64-A of 1939 Act, have distinguished the decision of the Supreme Court reported in A.I.R. 1965 S.C. 458 and have held that the period of limitation shall commence from the date of receipt of the order. For the aforesaid purpose, the High Courts have placed reliance upon the decisions of the Supreme Court reported in A.I.R. 1961 SC 1500 (RAJA HARISH CANDHRA RAJ SINGH v. THE DEPUTY LAND ACQUISITION OFFICER) and A.I.R. 1963 SC 1604 (STATE OF PUNJAB v. MST. QAISAR JEHAN BEGUM AND ANOTHER). These two earlier decisions of the Supreme Court rendered while construing different provisions under the Land Acquisition Act, cannot be given preference over a specific decision of the Supreme Court on the point. With respect, I am unable to accept the reasonings given by the Andhra Pradesh High Court and the Kerala High Court.

21. Incidentally it may be noticed that the decision reported in A.I.R. 1965 SC 458 has been followed by a Division Bench of the Karnataka High Court in A.I.R. 1972 MYSORE 6 (G.R. NANUNDASWAMI v THE MYSORE STATE TRANSPORT APPELLATE TRIBUNAL AND OTHERS) wherein Justice Venkataramaiah (as His Lordship then was). speaking for the Division Bench of Mysore High Court. has observed that the period of limitation has to start from the date of the order and not from the date of the knowledge of the order or receipt of the order.

22. In view of the aforesaid facts, I am of the view that the period of limitation is 30 days from the date of order.

23. Once this conclusion regarding interpretation of Section 90 is reached, it is obvious that Rule 159 has to be read in consonance with the provisions contained in Section 90. It is thus obvious that the revision petitions which were filed admittedly beyond thirty days from the date of the order must be taken to be barred by time. Even though the revisions were barred by time, the fact that the provisions contained in the Rule were apparently different, can be construed as a sufficient ground for condonation of delay. The second proviso of Section 90 specifically empowers the State Transport Appellate Tribunal to entertain the application after expiry of thirty days if it is satisfied that the applicant was prevented by good and sufficient cause from making the application in time. In the present case, this aspect has not been considered as the Tribunal as well as the applicant before the Tribunal had thought that the revision petitions were within time. Since the provisions contained in the Rules appear to be misleading, it would be proper to remand the matter to the Tribunal to consider the question as to

whether the power to condone the delay as envisaged under the second proviso should be invoked or not. The present respondent No.3, in both the writ petitions, should be given opportunity for filing petition for condonatio n of delay and the matter is to be considered thereafter, after giving opportunity of hearing to the present respondent No.3 as well as the present writ petitioner.

24. Since on the aforesaid aspect, the writ petitions are allowed, it is unnecessary to deal with other contentions raised by the petitioner. It goes without saying that in case the respondent No.2 decides to condone the delay and hear the revisions on merit, it would be open to the parties to raise all the questions afresh. Status quo ante prevalent on the date of disposal of the Revisions shall be restored.

25. In the result, the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes
dpk

To

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